

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CONDADO 5, LLC,
Appellant

v.

VAQUERIA LAS MARTIAS, INC.
Appellee

CHAPTER 12 TRUSTEE,
José R. Carrión
Appellee & Cross-Appellant

CASE NO. 3:20-cv-01344-ADC

BANKRUPTCY APPEAL

**DEBTOR APPELLEE & APPELLANT's¹ OPPOSITION TO CONDADO 5's
MOTION TO STAY APPELLATE PROCEEDINGS**

Debtor Appellee and Appellant Vaqueria Las Martas, Inc. (or “Debtor”) opposes the *Motion to Stay Appellate Proceedings* on these grounds:

Argument

1. Creditor Condado 5, LLC (or “Condado”) submits this appeal has become moot. *Motion to Stay Appellate Proceedings* (or “Motion”), at page 3, ¶¶ 8-9, docket no. 29. It argues that if the bankruptcy court grants its motion to dismiss the Chapter 12 petition, this appeal will become moot.

2. The Chapter 12 Trustee has opposed this motion. See docket no. 31 (“*Trustee Opposition*”). Debtor Vaquería Las Martas, Inc. (or “debtor”) joins that opposition and incorporates all the Trustee’s arguments.

3. The First Circuit holds, “Simply stated, a case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the

¹ Appeal by Vaquería Las Martas Inc. 21-cv-01081 PAD.

outcome." *D.H.L. Assocs., Inc. v. O'Gorman*, 199 F.3d 50, 54 (1st Cir. 1999) . It also has ruled, "A second and independent reason for mootness is that a court cannot provide meaningful relief to the allegedly aggrieved party." *Id.*, at 53. A third test is whether the controversy is immediate and real. *Id.*, at 54.

4. The controversy here is both immediate and real. First, if this Court upholds the bankruptcy court and finds the milk proceeds are not subject to Condado's alleged lien, debtor will have the means to finance its Chapter 12 plan. As the Trustee notes, "Condado has continued to retain all the proceeds from the sale of raw milk by Debtor. Also, Condado has failed to refund Debtor the amounts retained from the sale of raw milk after the bankruptcy was filed. Both actions have impaired Debtor's financial success and caused Debtor's inability to submit a feasible plan and obtain confirmation." Trustee opposition, docket no. 31, at page 3.

5. Second, if this Court agrees with the bankruptcy court that debtor has the right to the milk proceeds, its ruling will require reversal of any order granting Condado's motion to dismiss. A dismissal order will rest on the finding that debtor cannot fund its Chapter 12 plan. Affirming the bankruptcy court will mean that debtor can finance its plan. Debtor anticipates that it will appeal any Order dismissing its bankruptcy case.

3. Third, as the Trustee also notes, Trustee opposition, docket no. 31, at page 3, ¶ 8, Condado's *Motion to Stay* presumes that the bankruptcy court will grant the *Motion to Dismiss*. There is no guarantee that the bankruptcy court will do so. The Trustee stresses, "Because of this, the matters object of Condado's *Motion to*

Dismiss are directly related to this Appeal. Until the Appeal is resolved, the Bankruptcy Court likely will not resolve the *Motion to Dismiss*.” Trustee opposition, docket no. 31, at page 3, ¶ 9.

Conclusion

This appeal presents a live controversy. Debtor can finance its Plan and obtain confirmation if this Court upholds the bankruptcy court. Delaying the appeal by granting a stay will prejudice debtor by not giving it the means to succeed. The Court should avoid that result by refusing to stay the appeal.

Debtor Vaquería Las Martas, Inc. asks that the Court deny the motion to stay appellate proceedings.

I hereby certify on this same date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case, including counsel for the Trustee, for Condado 5, the Puerto Rico Milk Industry Regulatory Office and the Assistant U.S. Trustee for Region 21.

Dated: February 26, 2021.

s/ *L. A. Morales*

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